

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1007 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 -No

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GANESHBHAI MAVAJIBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR NAGIN N GANDHI for Petitioner

MR HL JANI, APP for Respondent No. 1

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/12/98

C.A.V. JUDGEMENT

Petitioner is an accused, who is facing the charge under sec.302 of IPC for which offence has been registered against him at Bagadana Police Station as C.R.No.I-116 of 1997 on 31-10-1997. Thereafter, he was arrested by the Police and sent him to judicial custody. At present, he is in jail as an undertrial prisoner.

2. The present petition is preferred for releasing him on bail on the ground that though he is in jail as an undertrial prisoner since October, 1997 and charge-sheet has been filed since long, the trial has not proceeded with. Therefore, it is submitted that petitioner may be released on bail only on that ground.

3. Notice was issued to the State and record and proceedings were called for from the District and Sessions Court, Bhavnagar. Even explanation of District & Sessions Judge was also asked for to that effect.

4. I have heard learned counsel for the petitioner Mr.N.N.Gandhi and learned APP for the State, Mr.H.L.Jani. Mr.Gandhi has argued on the points which has contended in his pleadings. Therefore, it is not necessary to repeat the same again at this stage. He has relied upon the judgments reported in AIR 1978 Supreme Court page 527 and AIR 1979 Supreme Court page 1360 and vehemently argued that petitioner should be set at liberty forthwith as trial has not been concluded even though charge-sheet has been submitted since long.

5. I have gone through the record and proceedings. It is transpired that charge-sheet has been filed and above case has been registered as Sessions Case No.35 of 1998 and it was transferred to the Sessions Court at Mahuva because incident has taken place in the revenue limits of Mahuva Sub-Division. It is also established from the report of Extra Assistant Judge and Addl Sessions Judge, Bhavnagar, Camp at Mahuva, that above Sessions Case is lying with him and waiting for trial. It is further established that till he has submitted the report, muddamal and FSL report have not been received by him and, therefore, he is not in a position to proceed

further in the matter. So, the explanation given by the learned Judge is quite satisfactory as the situation was beyond his control to proceed further in the matter.

6. There cannot be any dispute regarding the principles laid down by the Supreme Court in the above reported judgments. It is true that as per the judgment of the Apex Court, the petitioner is entitled for speedy trial provided the required materials are available to the Court. It is also true that every accused is entitled for speedy trial. In the absence of muddamal and FSL report, Court could not proceed further in the matter though one year time has passed. Under the circumstances, nobody can be blamed for non-conclusion of the trial.

7. In view of the above facts and circumstances, though trial is not completed within the above time limit, petitioner cannot be set at liberty when he is facing the serious charge under sec.302 of IPC. However, some order is required to be passed so that the trial may come to an end as early as possible. Hence, I pass the following order:

O R D E R

This petition is rejected. Notice is discharged.

Extra Assistant Judge and Additional Sessions Judge, Bhavnagar, Camp at Mahuva, is hereby directed to take active interest in seeing that the muddamal and FSL report are received as early as possible. As soon as the same are received, Sessions Case No.35 of 1998 is ordered to be expedited and it should be concluded within three months from the date of receipt thereof.

Confidential letter No.Cri.431/98 dated 9-12-1998 sent by the District and Sessions Judge, Bhavnagar to the Registrar, High Court of Gujarat is directed to be kept in Special Criminal Application No.1007 of 1998.

(R.P.DHOLAKIA,J.)

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